

Ackerman, Joyce

From: Ackerman, Joyce
Sent: Wednesday, October 18, 2017 11:21 AM
To: Dave Stewart; Stovall - CDPHE, Curtis
Cc: Walker - CDPHE, David; MacGregor - CDPHE, Kelly; jason.king@coag.gov; Richard Dean; JSteeler@sennlaw.com; Henderson, Jerry; Edward Smith; randy.perila@state.co.us; Ikenberry, Doug; martin.ogrady@state.co.us; Piggott, Amelia; Lensink, Andy
Subject: RE: Stratus Redtail Ranch

Dear Mr. Dean, Mr. Stewart, and Mr. Steeler – Thank you very much for the outline of the workplan. I have the following comments, some of which reiterate CDPHE's comments below.

1. We anticipate that nearby residents may have concerns regarding odors, so the air monitoring component is important. I recommend establishing some kind of perimeter for each day's work and setting up appropriate instrumentation at that perimeter to demonstrate that no air emissions are migrating to nearby receptors. At the end of each day's work, I recommend closing any open excavations where contaminated soils could be off-gassing to eliminate the possibility of air emissions. Air monitoring for worker health and safety will also be needed in the immediate work areas for both the contractors conducting the work and persons from the various regulatory agencies overseeing the work. I will be utilizing EPA's START contractor to assist in overseeing the work and we will likely bring our own air monitoring instruments.
2. All drums found during the project should be removed and disposed, whether empty or with contents. All empty drums removed should be included in the inventory of drums removed from the Site in the final report.
3. There may be other hazardous substances in some of the drums in addition to those previously found at the Site. The IBM response to the CERCLA 104(e) information request listed a number of possible chemicals transported to the Neuhauser Landfill, although toluene was one of the larger waste streams. The workplan needs to have provisions for dealing with drums where the contents might need to be sampled and characterized for different disposal arrangements than the MEK/toluene mixtures.
4. The fence is a great idea and will be a good visible screen. However, it would not keep out a determined trespasser. Therefore, drums and overpacks should be secured somehow until they are picked up for disposal. If drums and overpacks are left on-Site pending pickup and transport for disposal, one possibility is renting a large cargo container to be staged at the Site which can be locked at night for temporary storage. Another possibility is if the drums and overpacks can be transported off-Site immediately every day and be stored at a permitted TSDF pending final disposal arrangements. The AOC will have a requirement that all drums must be transported off-Site as soon as practicable but no less than 30 calendar days after excavation.
5. The final disposal facility(ies) must be in compliance with the CERCLA off-site rule. Please let me know the facility(ies) as soon as possible and I can assist in determining if they meet this requirement.
6. I think it is a good idea to remove highly contaminated soils and conduct confirmation sampling. These efforts should be carefully documented in the final reports. I do not anticipate that EPA will use this data to make any conclusions regarding the status of the Site. For EPA's purposes, this project is an interim action to address known hazards at the Site.

I look forward to receiving your workplan. Thank you for your efforts at this Site.

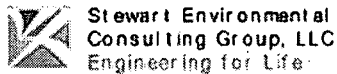
Joyce Ackerman

On-Scene Coordinator and START P.O.
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From: Dave Stewart [mailto:Dave.Stewart@stewartenv.com]
Sent: Wednesday, October 18, 2017 9:41 AM
To: Stovall - CDPHE, Curtis <curtis.stovall@state.co.us>
Cc: Walker - CDPHE, David <david.walker@state.co.us>; MacGregor - CDPHE, Kelly <kelly.macgregor@state.co.us>; jason.king@coag.gov; Richard Dean <rdean@stratuscompanies.com>; JSteeler@sennlaw.com; Henderson, Jerry <jerry.henderson@state.co.us>; Edward Smith <edwardh.smith@state.co.us>; randy.perila@state.co.us; Ackerman, Joyce <Ackerman.Joyce@epa.gov>; Ikenberry, Doug <Douglas.Ikenberry@state.co.us>; martin.ogrady@state.co.us
Subject: RE: Stratus Redtail Ranch

Curt, thank you for your comments on the drum removal outline. We will incorporate these comments into the plan and submit for review and approval prior to implementation. We will engage the remediation contractor for additional clarification on how materials are to be handled on site and this will be covered in a materials management plan as well.

Dave



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From: Stovall - CDPHE, Curtis [mailto:curtis.stovall@state.co.us]
Sent: Wednesday, October 18, 2017 8:55 AM
To: Dave Stewart
Cc: Walker - CDPHE, David; MacGregor - CDPHE, Kelly; Jason King; Richard Dean; Jonathan H. Steeler (JSteeler@sennlaw.com); Henderson, Jerry; Edward Smith; Perila - CDPHE, Randy; Ackerman, Joyce; Ikenberry, Doug; Martin OGrady - CDPHE
Subject: Fwd: Stratus Redtail Ranch

Dave,

Dave Walker from CDPHE's Hazardous Waste Corrective Action Unit reviewed your drum removal project outline. His comments are provided below (see forwarded email). Please feel free to contact Dave directly if you have questions about his comments. Here are my comments:

1. Air monitoring will be a critical aspect of this project. The plan should describe in detail plans for air monitoring.

2. The plan should describe how drums will be secured and stored in advance of removal from the site.
3. (This is related to Dave's comment on Item 4.i): Even if the plan is to remove most contaminated soil surrounding the drums, you may want to consider implementing some type of open excavation insitu treatment (e.g., chemical oxidant, etc.) to reduce levels of contamination remaining in soil and groundwater.
4. The plan should identify the transportation route for hazardous waste removal, preferably avoiding roads adjacent to neighborhoods, if possible.
5. You may want to consider placing visual screening on the perimeter fence.

Thanks,
Curt

----- Forwarded message -----

From: **Walker - CDPHE, David** <david.walker@state.co.us>
Date: Wed, Oct 18, 2017 at 7:45 AM
Subject: Re: Stratus Redtail Ranch
To: "Stovall - CDPHE, Curtis" <curtis.stovall@state.co.us>

Hi Curt,

The outline for the Drum Removal Project looks good with no red flags. Here are some thoughts of things they should make sure to address in the actual plan.

Item 3. This project will require construction of a decontamination pad for heavy equipment used to handle the drums and excavate contaminated soil. If they keep the heavy equipment in the work area, the decon may only have to be done once before the equipment leaves the site.

The plan will need to provide detail on how overpack drums/disposal drums will be transferred from the dirty side to the clean side for storage and transport. For example, how will they prevent tracking of contaminated soil from the work area into the secondary containment for new drums receiving waste (Item 3.d.). Alternately, if the secondary containment is within the work area, the trucks used to transport the waste to the disposal facility have a clean access route to the side of the secondary containment, or they could use a truck tire washing station transport trucks enter the work area.

Items 4.d and 4.i - The plan needs to discuss how will highly contaminated (hazardous waste) soil adjacent to the drums be containerized for shipment. There may be too much soil to cost effectively use 55-gallon drums, but the Clean Harbors incinerator may not be able to accept bulk shipments from lined roll-off containers.

Item 4.g - The plan will need to include a waste characterization plan to ensure collection data that meets the requirements of the Clean Harbors incineration facility.

Item 4.i. The plan will need to propose criteria for determining where to stop excavation of contaminated soil during the drum removal project (i.e., do they just want to remove soil that is considered hazardous waste or do they want to achieve residential/unrestricted use.). The plan should also include a confirmation soil sampling plan to provide data demonstrating that the objective has been met.

Please call me at (303) 692-3354 with questions.

Sincerely,

Dave Walker

On Wed, Oct 18, 2017 at 6:07 AM, Stovall - CDPHE, Curtis <curtis.stovall@state.co.us> wrote:
Here is the latest update from Steeler, including an outline of the drum removal plan from Stewart.

----- Forwarded message -----

From: Jason King <Jason.King@coag.gov>
Date: Tue, Oct 17, 2017 at 5:13 PM
Subject: Fwd: Stratus Redtail Ranch
To: Curtis Stovall - CDPHE <curtis.stovall@state.co.us>, "doug.jamison@state.co.us" <doug.jamison@state.co.us>, Edward Smith - CDPHE <edwardh.smith@state.co.us>, randy perila <randy.perila@state.co.us>

See below and attached conceptual work plan. Please let me know if you intend to provide comments. This will probably move fast.

Amelia will provide me a draft of the AOC for review.

Begin forwarded message:

From: "Jonathan H. Steeler" <JSteeler@sennlaw.com>
Date: October 17, 2017 at 4:40:06 PM MDT
To: "Piggott, Amelia" <Piggott.Amelia@epa.gov>, "Ackerman, Joyce" <Ackerman.Joyce@epa.gov>, "jason.king@coag.gov" <jason.king@coag.gov>, 'Kevin Olson' <kolson@us.ibm.com>
Cc: "rdean@stratuscompanies.com" <rdean@stratuscompanies.com>, 'Dave Stewart' <Dave.Stewart@stewartenv.com>
Subject: Stratus Redtail Ranch

Amelia:

Following up on our call of yesterday, I want to reiterate that Stratus Redtail Ranch, LLC is prepared to undertake a removal action of the drums and liquid within the drums at the Stratus Property. I have attached a conceptual outline of the proposed removal action. If the foregoing is acceptable, we will turn this into a plan that can be attached to an AOC to be entered into between EPA and Stratus. On Friday 10/13, you also requested a copy of the results of the latest round of site investigations. This information will be forwarded to you and Joyce Ackerman under separate cover later this week or at the beginning of next week at the same time that it is submitted to the State of Colorado.

We understand from your email of October 13th, that EPA is concerned about site security and the potential for leakage from the drums. To address security issues, my client is prepared immediately to install fencing around the areas where the investigation has indicated that drums

are present. Please advise if EPA would like this for Stratus to proceed with fencing. With regard to the potential for ongoing leakage from the drums, the investigations to date has not revealed any evidence that the drums are leaking. Notwithstanding the foregoing, Stratus believes that the work can be accomplished by the end of November at the earliest and mid-December at the latest. The timing somewhat depends upon our ability to negotiate a removal plan and an acceptable AOC.

You have indicated that due to the lack of available EPA resources, that we simply use the model AOC. Could you please forward the same to me ASAP? While we understand the Agency's desire to use the model, in view of the unwillingness of IBM, clearly a PRP, to participate in any sort of discussion, we request that the AOC provide Stratus with contribution protection, at least with respect to the work being proposed. As an innocent landowner who performed all appropriate inquiry prior to acquisition, I believe my client should be protected against claims by IBM or other PRPs given its willingness to step up and perform the drum removal. We would also like to discuss EPA waiving its ability to recover oversight costs from Stratus. Oversight costs, if any, should be sought from other PRPs who, to date, have done nothing towards site clean-up. Stratus has expended approximately \$500,000 at this site while PRPs have spent nothing.

In addition, we would like to discuss possible assurances from EPA regarding Stratus' innocent landowner status so as to provide my client comfort that it will be treated consistently with its limited involvement at this site. While not a condition of doing the work, we would like to discuss the same as well as any assistance EPA can provide with regard to other PRPs. These discussions can certainly be done after the drum removal AOC is finalized and the removal effort is completed. As I indicated in our telephone call, on Wednesday of last week, I was advised by counsel for IBM that at this time IBM had no interest in participating in any further discussions regarding the site. Accordingly, It is likely that my client will commence litigation against IBM in the near term. I have copied counsel for IBM with this email and if the foregoing statement is an incorrect characterization of IBM's position, I am sure counsel will correct that position.

I have copied Jason King with this email and I assume he will provide copies to the various folks at CDPHE. My client will be sharing this email with the Town of Erie as well. We believe that it is important that EPA, the State and the Town are all on the same page during the removal action.

Thank you for your efforts. I look forward to hearing from you regarding a path forward. Jon

Jonathan H. Steeler
Senn Visciano Canges P.C.

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